



COMMONWEALTH of VIRGINIA

Office of the Governor

Timothy M. Kaine
Governor

February 1, 2008

The Honorable Mary E. Peters
Secretary of Transportation
1300 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Peters:

Thank you for the time you spent with the Virginia Congressional leadership, the Federal Transit Administrator, the Metro and Airports Authority leadership, and the Virginia team that is committed to bringing rail to the Dulles corridor—the most significant corridor in the Washington Metropolitan area without Metrorail service.

The Dulles Corridor Metrorail (“Dulles Rail”) project represents a shared vision that dates back to the federal government decision in 1964 to plan, fund and build Washington-Dulles International Airport, including the Dulles Access Road.

Your leadership and willingness to take a personal role in this project is especially important, given the improved transportation it will bring to travelers in this vibrant but congested corridor. I would also note the related benefits to our homeland security, to our international access to capital cities around the globe, and to our federal agencies and members of Congress that travel in the corridor.

This is our initial and immediate response to Administrator Simpson’s letter of January 24. That letter set out a series of concerns about the Dulles Rail project, while Congress has consistently received information suggesting that the project met applicable criteria. To resolve this situation, you kindly agreed with Senator Warner to open a dialogue about the concerns expressed in the Administrator’s letter.

It is our hope that this prompt response, accompanied by a notebook with supporting documents, can be the basis of a dialogue with federal transportation officials. We want to fully understand your concerns and then look creatively at how to resolve them to allow the project to continue forward. Your willingness to entertain this dialogue prior to rendering any final determination on the project is most appreciated. To facilitate this dialogue, the project

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contractor has agreed to mitigate price and schedule impacts for at least 30 days. This should allow us an opportunity for a prompt and full dialogue.

Simply put, the unshakeable goal of the combined Virginia Congressional delegation, and all state, local and private partners is to make this project work and to do so in partnership with the federal government.

Project History

The genesis of the Dulles Rail project goes back many years. It has always been a project where state and federal officials have worked in partnership. In the last ten years, there have been numerous decision points whereby the FTA has signaled approval of the project's ongoing progress. These approvals include the following:

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| 1999 | FTA approves 1999 WMATA Constrained Long Range Plan, including the ability to construct Dulles extension and operate/maintain total Metro system |
| 2000 | FTA approves initiation of Environmental Impact Statement (EIS) |
| 2000 | FTA approves 2000 WMATA Constrained Long Range Plan, including the ability to construct Dulles extension and operate/maintain total Metro system |
| 2002 | FTA approves first Draft EIS |
| 2002 | FTA advises Virginia that funding limitations require a phased approach and a revised EIS |
| 2002 | FTA approves 2002 WMATA Constrained Long Range Plan, including the ability to construct Dulles extension and operate/maintain total Metro system |
| 2003 | FTA approves Supplemental Draft EIS |
| 2004 | FTA approves 2003 WMATA Constrained Long Range Plan, including the ability to construct Dulles extension and operate/maintain total Metro system |
| 2004 | FTA approves Preliminary Engineering for Dulles Rail |
| 2004 | FTA approves Dulles Transit Partners contract (PPTA) as meeting federal competitive procurement requirements |

- 2005 FTA approves 2004 WMATA Constrained Long Range Plan, including the ability to construct Dulles extension and maintain/operate total Metro system
- 2005 FTA rates the project as “recommended” in the annual New Starts Report
- 2005 FTA approves the 2005 WMATA Constrained Long Range Plan, including the ability to construct Dulles extension and maintain/operate total Metro system
- 2005 FTA approves EIS Record of Decision
- 2006 FTA approves milestone agreement for Final Design review, including a requirement for execution of a fixed-price, design build contract *prior to* FTA consideration for Final Design
- 2006 FTA approves an amended EIS Record of Decision
- 2006 FTA approves MWAA as having the “financial, legal and technical Capacity to lead the Dulles Rail project”
- 2007 FTA Administrator writes “The only significant outstanding issue at this time is whether or not the project’s estimated cost would comply with the New Starts criteria.”
- 2007 FTA approves the WMATA 2006 Constrained Long Range Plan, including the ability to construct Dulles extension and operate/maintain total Metro system

Current Project Status

On January 26, 2007, Administrator Simpson wrote to the Virginia Congressional delegation that “the only significant outstanding issue at this time is whether or not the project’s estimated costs would comply with the New Starts criteria.” Since that time, we have engaged in a focused effort to comply with that sole remaining issue.

Recognizing the scope and the complexity of the Dulles Rail project, the Commonwealth and the Airports Authority, *at the request of the FTA*, entered into a fixed-price, design-build contract in the spring of 2007, prior to any consideration of the Authority’s Request to Enter Final Design.

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In August 2007, I spoke with you and the Administrator by phone. In that call, he expressed concern about project cost. You encouraged us to work to find savings and, in subsequent discussions, the FTA Administrator and staff pointed out the magnitude of cost reduction that would be necessary to allow the project to receive Final Design Approval. The project team worked to find such reductions and submitted, on September 24, agreed upon cost reductions totaling over \$300 million dollars.

The FTA Administrator, staff and professional consultants reviewed the cost reduction proposal at length over the ensuing weeks. After review, the clear communication to the Virginia team was that cost reductions in the amount of \$242 million were accepted and, importantly, with such reductions the project now qualified under applicable cost/benefit criteria. Such communications were consistent with the written report on New Starts projects delivered to Congress last week. These cost reductions were independently verified by FTA cost consultants in a report dated November 5, 2007.

Beginning in late November, we began to hear external reports of other FTA concerns, beyond the cost issue that had been identified as the sole outstanding issue nearly one year ago. Despite significant efforts, we could get no confirmation of these new issues until our meeting with you and the Administrator on January 24.

We understand that we must address all issues in the Administrator's letter. But, I hope you understand our confusion at the recent process. One year ago, we were told that cost was the sole remaining issue to resolve. With the FTA's guidance, we took steps to reduce cost and were then given clear communication that we had hit the target. To find out on January 24 that the cost issue was once again challenged, and that a whole series of additional issues stood as fatal roadblocks to federal partnership, was deeply discouraging. And, we know you are aware, from the Deloitte study of FTA released in 2007, that our experience is not unique.

At this point, however, the key issue before us is what needs to be done to make this project work. Your willingness to open dialogue on that issue is most welcome. We are committed to working as creatively as we can with the FTA and your office to answer any concerns. And, if we need to make additional adjustments—small or large—to proceed forward into Final Design, we are ready to explore those with you.

Discussion of Issues Raised in the January 24 Letter from FTA

The attached notebook, jointly transmitted by the Airports Authority, is designed to demonstrate the strength of the current project and its compliance with the federal statutes and regulations. The material was marshaled under tight time conditions by the Commonwealth, the Airports Authority and the project contractor to initiate dialogue with your office.

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With reference to the attached materials, let me address the four key areas of concern raised in Administrator Simpson's January 24 letter.

Cost Effectiveness: Following discussions with the FTA Administrator and staff last summer, Virginia proposed \$306 million in project reductions. The FTA accepted \$242 million of these reductions and reduced the overall project cost. The acceptance of these reductions was verified by the oversight consultant in their November 5, 2007 report and noted in subsequent reports.

In December 2007, after accepting the reductions, the FTA asked that we obtain change orders from the contractor to verify the reductions. The attached notebook confirms, through executed change orders, the previously accepted cost reductions. Acceptance of this documentation, as indicated in the January 24 letter, places cost effectiveness of the Dulles Rail project within the required range. This would be consistent with previous FTA ratings. We would appreciate an acknowledgement and verification of this cost-effectiveness calculation.

Capital Financial Plan: Without the benefit of all financial management oversight reports, the attached notebook includes responses to the concerns raised in the Administrator's letter. The attached update to the September 2007 preliminary financial plan increases the level of committed local funding to the required level of 75%. The additional information includes a sensitivity analysis which demonstrates the ability of the Dulles Toll Road to support the Phase I project, even under low-growth scenarios.

Our current submission is based on conservative revenue assumptions that benefit the toll payers on the Dulles Toll Road. As part of our dialogue, we are prepared to discuss alternative financing scenarios.

The Metrorail capital rehabilitation and replacement costs are accurate predictions of both the costs and the likely regional commitments to the WMATA system. The FTA has the ability to monitor and enforce these commitments through its approval role in the regional Constrained Long Range Plan and the Transportation Improvement Plan. The historical evidence for the region and the federal government meeting its Metro needs is strong, as evidenced the WMATA Board approval of the financial plan, by the successful Metro Matters funding commitments, by the new funding commitments of Virginia, the District of Columbia, and Maryland, and by the current consideration of additional, dedicated federal funding for WMATA. I draw particular attention to Virginia's successful 2007 effort to dedicate an additional \$50 million annually to Metro capital needs. In that regard, Virginia's 2007 transportation legislation also provides opportunities for project funding reserves in addition to increasing transit operating funding by more than 40 percent annually. As the largest transit system in Virginia, WMATA is a major beneficiary of this operating funding increase. All of these supplementary materials are summarized in the attached notebook.

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We believe that a fair consideration of these factors consistent with other projects and programs across the country will result in a “Medium” rating for the Capital Financial Plan, an adequate rating for this project in the New Starts program, and will be consistent with previous FTA ratings.

To summarize with respect to these first two items—cost effectiveness and capital plan—these revised submissions are sufficient to justify an overall Medium ranking of this project consistent with the recent communication to Congress on the New Starts program. As such, they would qualify this project for Final Design Approval. However, the FTA Administrator has raised two other issues of significance, and they bear discussion.

Airports Authority Technical Capabilities: On November 30, 2006 FTA certified that the Airports Authority has the legal, financial and technical capacity to carry out the Project, including the safety and security aspects. This certification validated our belief that the Airports Authority provides this project with the prospect of lower toll increases, more conservative and lower cost financing, and strong public oversight over critical infrastructure.

The Project Management Oversight Report (PMOC) to the FTA dated January 14, 2008, concluded, subject to the addition of certain personnel, that “MWAA management demonstrated experience to manage large projects,” that “MWAA staff assigned to the project is capable and experienced.” The Report also concluded “the PMOC recommends that FTA consider including the above recommendations as conditions for Project approval into Final Design.”

The Airports Authority has agreed to all recommendations in the oversight report and is currently recruiting for the recommended positions. As of this date, position recruitment announcements can be found on the Airports Authority web-site, www.mwaa.com.

The attached notebook contains extensive additional information on the technical and financial capabilities of the Airports Authority. I know you are deeply familiar with the Authority, a signature initiative of President Reagan and former Secretary of Transportation and current United States Senator Elizabeth Dole. The transfer of the airports from federal control into the multi-jurisdictional authority has enabled Washington-Dulles International and Reagan National to thrive in the last two decades. During this time, the Authority has completed the successful implementation of a capital improvement program valued at \$3.5 billion. And, the Authority is currently managing additional projects valued in excess of \$7.2 billion, including five miles of underground subway system at Dulles that will transport up to 10,000 passengers per day. Construction of the subway system is on time and on budget.

The Authority’s experience has included the construction of capital improvements for other third party users including airlines, the Federal Aviation Administration Air Traffic Control Tower at Washington Dulles International and Ronald Reagan Washington National Airports,

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and the Federal Customs and Border Protection expanded international arrivals facility. In 2007 alone, the Authority completed over \$750 million of engineering and construction activity encompassing over 5.3 million man hours.

The Authority has assembled a project team that includes key personnel with extensive experience in large transit and design-build projects, and has taken steps to bring on new staff. The Airport Authority's design-build contractor, Dulles Transit Partners, has assembled a world-class team of experts with experience in heavy rail construction. The project site is familiar to the Authority as the vast majority of the project site is located on Authority property.

Intergovernmental Agreements: As required by FTA in 2006, the Airports Authority has executed a design-build contract for the Project. This contract not only reduces the public sector risks of cost increases and overruns, but it also provides long-term liability and warranty protections for the ultimate owner and operator, WMATA. The attached notebook provides significant additional information on the contract itself. Comparisons with comparable contracts for other projects in the U.S. will be provided. We encourage you to compare this contract with other transit design-build contracts.

The notebook includes all relevant agreements between the Airports Authority and WMATA, as well as recent correspondence from the WMATA General Manager. These documents confirm a structure with a single point of construction responsibility vesting with the Airports Authority. These documents also confirm a Project management structure that properly aligns the relationship between WMATA, the ultimate owner and operator, and the Airports Authority.

WMATA staff is co-located in the project office with the Airports Authority project manager and Airports Authority staff. The Airports Authority is cognizant that the Project must be built to WMATA standards and accepted into the WMATA system.

The Airports Authority's contract with Dulles Transit Partners requires that the Project be designed and constructed to WMATA standards and failure to do so is at the sole risk of contractor.

The Path Forward

This letter, and the attachments, are intended to further the dialogue about moving this project forward. We have endeavored to summarize our responses to the issues raised in the Administrator's letter of January 24 and provide appropriate documentary back-up.

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We are prepared to meet and negotiate a path forward for this project. No party should be wedded to any particular approach, so long as we advance together the shared goal of rail in the Dulles corridor without undue delay.

I would suggest that our staff work together to analyze the issues raised in the Administrator's letter and the material contained in this response. That work can then surface key points agreed to in writing by our respective staff for further discussion among federal, state, local, and regional officials and our Congressional Delegation. I know that we share the same goal—speedy delivery of rail service in the Dulles Corridor.

We appreciate your assistance and I look forward to further dialogue about this critical project.

Sincerely,


Timothy M. Kaine

Cc: Virginia Congressional Delegation
The Honorable James S. Simpson
The Honorable Gerald E. Connolly
The Honorable Scott K. York
James E. Bennett, MWAA
John B. Catoe, WMATA